

**JOHNSON &
BORENSTEIN, LLC**
ATTORNEYS AT LAW

12 Chestnut Street
Andover, MA 01810-3706
Tel: 978-475-4488
Fax: 978-475-6703
www.jblclaw.com
don@jblclaw.com

RECEIVED

JUN 30 2020

Zoning Board of Appeals

Mark B. Johnson (MA, NH, DC)
Donald F. Borenstein (MA, ME, NH)

Gregory R. Richard (MA, NH)
Kathleen M. Heyer (MA, NH)
Thomas D. Orr (MA)
Gordon T. Glass (ME, MA)

Of Counsel
Robert W. Lavoie (MA, NH)

Paralegals
Karen L. Bussell
Lianne Patenaude
Ellen M. Melvin
Tina M. Wilson

June 28, 2020

Via E-mail – koshivosk@graffton-ma.gov
Town of Grafton
Zoning Board of Appeals
c/o Katrina Koshivos
30 Providence Road
Grafton, MA 01519

RECEIVED TOWN CLERK
GRAFTON, MA
2020 JUN 30 PM 12:12

Re: High Point Estates, Lot 49 – Status of Easements

Dear Chairperson McCusker and Zoning Board of Appeals Members,

As you are aware, I represent Peter Hingorani and Adams Road Trust regarding the High Point Estates subdivision (“Subdivision”).

At the Board’s recent meeting regarding the Subdivision, the Board and its consultants expressed concern that a portion of detention basin #4 may encroach onto Subdivision Lot 49, outside of any easement area. I understand from that discussion that the Zoning Board may consider Lot 49 in the Subdivision to be subject only to a single easement, the 15’ Access Easement as shown on a so-called subdivision modification plan entitled “Plan Modifying Subd. Easements High Point Estates, Grafton, MA” dated March 13, 2017, and recorded in the Worcester District Registry of Deeds (“Registry”) in Plan Book 925, as Plan 101 (“2017 Modification Plan”). However, I write to explain why said Lot 49 is instead subject to two easements, the 15’ Access Easement and the 20’ Drainage Easement, both as shown on the original subdivision plan approved by the Board and entitled “Overall Project Plan High Point Estates Subdivision Grafton, Massachusetts” dated May 12, 2005, and recorded in the Registry in Plan Book 850, as Plan 64 (“2005 Original Plan”), and to explain that there has never been an effective extinguishment of either easement.

Under Massachusetts law, the recording of a plan alone, absent additional action taken by the party who recorded said plan, cannot effectuate either the creation or termination of easement rights:

- 1) To reserve or convey easement rights as shown on a recorded plan, the plan must not only be recorded but the recorded plan must additionally be referenced in a deed or other instrument by which property is conveyed. See Reagan v. Brissey, 446 Mass. 452, 458-60 (2006); Tattan v. Kurlan, 32 Mass. App. Ct. 239, 245-46 (1992).
- 2) Easement rights may be terminated: a) by the easement holder, via grant, release, abandonment, or estoppel; b) by a third party, via prescription/adverse possession; or c) generally, via merger of the dominant and servient estates. See Delconte v. Salloum, 336 Mass. 184, 188 (1957); Cheever v. Graves, 32 Mass. App. Ct. 601, 606 (1992). However, the recording of a plan alone does not by itself extinguish (or create) easement rights.

By deed dated August 7, 2017, and recorded in the Registry at Book 57558, Page 282, Adams Road Company, LLC conveyed Lot 49 in the Subdivision to Srinivasa R. Bayya and Swathi Burugu, the current owners of Lot 49. This deed did not refer to the 2017 Modification Plan but instead referred only to the 2005 Original Plan and described the premises as follows:

“The land in Grafton, Worcester County, Massachusetts, being shown as Lot 49 located on High Point Drive as shown on a Plan of Land entitled, ‘High Point Estates Subdivision, Grafton, Massachusetts’ recorded with Worcester County (Worcester District) Registry of Deeds, Plan Book 850, Plan 64, Sheets 1-8. Said Lot 49 containing 22,708.5 square feet of land, more or less, as shown on said Plan.”

Where the 2017 Modification Plan was never referenced in the deed conveying Lot 49, the extinguishment of easements referenced on that plan had no effect. Where the 2005 Original Plan was explicitly referenced in the deed conveying Lot 49 and the property conveyed was only described by reference to that plan, both the 15’ Access Easement and the 20’ Drainage Easement over Lot 49, as shown on the 2005 Original Plan, were created and reserved by Adams Road Company, LLC.

The 15’ Access Easement and the 20’ Drainage Easement over Lot 49, as shown on the 2005 original subdivision plan, have not been terminated by grant, release, abandonment, estoppel, prescription, or merger. As such, these easements remain in full force and effect today. Importantly, the outcome outlined above is consistent with the Zoning Board and my client’s intent, as the 2017 Modification Plan erroneously shows that the 20’ Drainage Easement over Lot 49 is to be extinguished instead of the 15’ Access Easement that the Board approved to be extinguished in its 2017 modification decision.

I would be happy to discuss this issue further with the Board’s legal counsel. Thank you for your time and consideration.

Very truly yours,

JOHNSON & BORENSTEIN, LLC

/s/

Donald Borenstein

DFB

Cc: Dan Hill, Esq. *via e-mail – dhill@danhilllaw.com*